



Texas Department of Insurance

333 Guadalupe Street P.O. Box 149104 Austin, Texas 78714-9104
512/463-6169

ID # 14571 MBS

RQ-281

December 18, 1991

JAN 03 92

The Honorable Dan Morales
Attorney General
State of Texas
P.O. Box 12548
Austin, TX 78711-2548

ATTENTION: Opinions Committee

RE: Tex. S.B. 1261, 72nd Leg.(1991) and Tex. S.B. 654, 72nd
Leg.(1991)

Dear General Morales:

The Texas Department of Insurance requests your opinion regarding an apparent conflict between two recently amended statutes. Senate Bill 654 amended the Property Code which now reads in pertinent part:

Sec. 42.001. PERSONAL PROPERTY EXEMPTION. (a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

- (1) the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or
- (2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

...

Section 42.002 of the Property Code lists personal property which is exempt under section 42.001(a). In paragraph 12 the following exemption is listed:

The present value of any life insurance policy to the extent that a member of the family of the insured or a

dependent of a single insured adult claiming the exemption is a beneficiary of the policy.

Thus, the Property Code appears to exempt from seizure for the satisfaction of a debt or judgement the proceeds of a life insurance policy up to \$60,000 for a family or \$30,000 for a single adult.

Senate Bill 1261 amended Insurance Code article 21.22 to require an unlimited exemption of insurance benefits from seizure under process as follows:

Notwithstanding any provision of this code other than this article, all money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured or any beneficiary under any policy of insurance issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer, shall:

- (1) inure exclusively to the benefit of the person for whose use and benefit the insurance is designated in the policy;
- (2) be fully exempt from execution, attachment, garnishment or other process;
- (3) be fully exempt from being seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered; and
- (4) be fully exempt from all demands in any bankruptcy proceeding of the insured or beneficiary.

The exemption applies regardless of whether the insured has the power to change the beneficiary or whether the insured or the insured's estate is a contingent beneficiary. Tex. Ins. Code art. 21.22, §2. However, the exemption does not apply to premium payments made in fraud of creditors or when a debt of the insured or beneficiary is secured by a pledge of the policy or its proceeds. Tex. Ins. Code art. 21.22, §3. The article does not prevent the proper assignment of any money or benefits to be paid or rendered under an insurance policy. Tex. Ins. Code art. 21.22, §4. The act applies to money or benefits to be paid or rendered to an insured or beneficiary without regard to whether the policy was issued before, on, or after the effective date of the act. Tex. S.B. 1261, Section 2, 72nd Leg. (1991).

The exemption in article 21.22 of the Insurance Code specifically includes benefits under any plan or program of annuities and

The Honorable Dan Morales
December 18, 1991
Page 3 of 4

benefits in use by any employer but omits a reference to individually purchased annuities. As employer-sponsored plans are specifically mentioned and individually purchased annuities are not so included, it appears the Legislature intended to exclude individually purchased annuities from the Insurance Code exemption.

The Texas Department of Insurance has received copies of an advertisement produced by a life insurance agent in which the statement is made, "THERE IS NO LIMIT ON THE AMOUNT OF MONEY YOU CAN PROTECT." The advertisement, which states the provisions of Senate Bill 1261 protect the cash values of life insurance policies from being lost in a law suit or in a bankruptcy, is attached for your information.

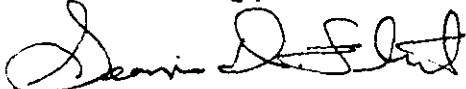
Senate Bill 654 was signed by Governor Richards May 24, 1991, and became effective immediately. Senate Bill 1261 was signed on June 15, 1991, and also was effective upon signing.

The Department of Insurance requests your opinion regarding the following questions:

- (1) Are insurance policy proceeds and cash values completely exempt from seizure under process or are those benefits exempt from seizure to the extent of the maximum amounts set out in section 42.001 of the Property Code?
- (2) Does the Texas Insurance Code article 21.22 exemption include individually purchased annuities?

Please contact Russell R. Oliver, Associate Commissioner for Legal Services, or Sarah Collier, Staff Attorney, (512) 463-6104, if you need additional information. Thank you for your assistance in this matter.

Sincerely,



Georgia D. Flint, Acting Commissioner

GDF/SC/kv

cc: Claire Koriath, Chair (113-2A)
Richard F. Reynolds, Member (113-2A)
Allene D. Evans, Member (113-2A)
A.W. Pogue, Associate Commissioner
Regulated Lines (107-2A)
Russell R. Oliver, Associate Commissioner
Legal Services (110-1A)

The Honorable Dan Morales
December 18, 1991
Page 4 of 4

Rhonda Myron, Deputy Commissioner
Life Group (106-1A)
Diane Moellenberg, Director,
Advertising, (111-1B)
Sarah Collier, Staff Attorney (110-1C)